Strengthening global tax governance as cornerstone of an equitable and effective global financial architecture

BY CHENAI MUKUMBA

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It has been said that 'tax is the price we pay to live in a civilized society'. Indeed, the social contract is premised on the idea that businesses and citizens should pay a certain amount of money to their governments and in turn governments provide key public sector services such as a legal system, defence, clean water and education. In many countries, however, the social contract is largely broken. Particularly in developing countries, the tax to GDP ratio ranges from between 10 to 15 percent of GDP, which results in limited domestically mobilized resources. And in these countries, the provision of many public services is limited.

While there is much that can be done at the national level to improve the levels of domestic resource mobilization, national economies do not operate in a vacuum and are affected by decisions that are made at the global level. Much has been written about the importance of national level reforms such as improving the capacity of tax administrations, introducing the use of technology, strengthening legislation--however, to do so singularly without focusing on the importance of global reforms is woefully inadequate.

The importance of these reforms lies in that, without addressing them, national level efforts to curb illicit financial flows are undermined. One cannot only focus on reforming domestic policies without addressing the questions of where these illicit financial flows end up. In 2015, the members of the High-Level Panel Report on Illicit Financial Flows from Africa stated that:

> **"[I]llicit financial outflows whose source is Africa end up somewhere in the rest of the world. Countries that are destinations for these outflows also have a role in preventing them and in helping Africa to repatriate illicit funds and prosecute perpetrators."[1]**

Background

A few years ago, in 2016, the Inclusive Framework of the Organisation for Economic Cooperation and Development (OECD) embarked on a process to reform the international tax rules to address the tax challenges arising from globalization and digitalization. This process has been fraught with controversy as many developing countries have expressed concerns on the legitimacy of the platform as well as the subsequent decisions coming out of the negotiations. In December 2020, African ministers in the Extraordinary Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration stated:

> "The Inclusive Framework negotiations have made it clear that developed countries are not listening to the concerns of developing countries and have

1 UN Economic Commission for Africa (2015)

> no intention of redressing the balance of taxing rights in any significant way."[2]

As such, they undertook a resolution at the First Extraordinary Meeting of the Specialized Technical Committees (STC) on Finance, Monetary Affairs, Economic Planning, and Integration to form a Sub-Committee on Tax and Illicit Financial Flows (IFFs) Issues. In 2022, from 6 to 8 April, the African Union convened its first-ever STC Sub-Committee Meeting on Tax and Illicit Financial Flows, where they discussed Issues of the Specialized Technical Committee on Finance Monetary Affairs, Economic Planning and Integration. The theme was "Tax Incentives: Implication of the Global Tax Reforms for Africa." This meeting reflected Africa countries' response to a global tax system that did not give equal voice to African countries.

Tax Justice Network Africa and civil society organizations both within and outside the continent have decried the role of the OECD in spearheading the reform of the global tax system. Indeed, this sentiment was further expressed in a series of letters released in March 2022 from a group of UN independent experts and special rapporteurs, including Professor Attiya Warris, the Independent Expert on foreign debt, other international financial obligations and human rights. These letters expressed concern that of the two pillars proposals from the OECD, Pillar One "will facilitate aggressive tax optimization strategies and tax evasion" and Pillar Two will "reduce the ability of low and middle-income countries to mobilize sufficient resources to invest in essential public services and to ensure the realization of human rights", reiterating the inadequacy of the OECD IF as the global rule-making body.[3]

The lack of a universal and inclusive global tax architecture has been highlighted as a problem by countries for many years. In the 2015 Addis Ababa Action Agenda (AAAA), UN Member States made it clear that they "commit to scaling up international tax cooperation" and stressed that "efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing States and African countries".[4] Similarly, the High-level Panel on Illicit Financial Flows from Africa, commissioned by the African Union and the United Nations Economic Commission for Africa (UNECA) Conference of African Ministers of Finance, Planning and Economic Development found that the global architecture for tackling IFFs was incomplete. It encouraged the establishment of an overarching global framework under the auspices of the United Nations.[5]

This same recommendation has been reiterated by the representatives of developing countries that have called for an intergovernmental tax negotiation process at the UN for over two decades. At the FfD Forum 2022, Malawi´s Vice-President, Saulos Klaus Chilima, stated on behalf of the African Group:

> "The African Group strongly believe on the urgent need to establish a universal, UN intergovernmental tax body and negotiate a UN Tax Convention to comprehensively address tax havens, tax abuse by multinational corporations and other illicit financial flows through a truly universal, intergovernmental process at the UN, with broad rights holders' participation."[6]

Push for reform at the United Nations

In October 2022, the G77 and China, a group of 134 developing countries, tabled a resolution at the UN calling for an intergovernmental tax body. The African Group also tabled a resolution calling for negotiations on a UN Convention on International Tax Cooperation. Both proposals saw no support from developed countries. Following the October decision at the UN, the African Group, led by Nigeria, tabled a revised resolution at the UNGA on the "Promotion of

2 African Union (2020)
3 UN Office of the High Commissioner for Human Rights (2022)
4 UN General Assembly (2015), para. 28.
5 UN Economic Commission for Africa (2015)
6 https://estatements.unmeetings.org/estatements/30.0010/20220425/UssVw9QoP6Nh/K7DlPI4XwBsb_en.pdf

inclusive and effective international tax cooperation at the United Nations." Member States discussed the resolution for adoption on November 23 and it was adopted by consensus.

Although the current global tax system is overseen by the OECD, the United Nations started working on tax issues long before it in the 1940s and early 1950s. The Fiscal Commission was established in 1946 and did work on the global tax system until 1954 when the commission was abolished.[7] It was two years later that the OECD work on tax was begun. In 1956, the Fiscal Committee, later known as the Committee on Fiscal Affairs, of the Organisation for European Economic Cooperation (OEEC) was established, and in 1963, the first Draft Model Double Taxation Convention on Income and Capital was developed. Since then, decision-making on the allocation of taxing rights and tax revenue has been controlled by OECD countries and as such, they have benefited from the status quo. There has been no meaningful progress towards returning the mandate of overseeing global tax decisions until recently. The adoption of this resolution will be a step forward in strengthening international cooperation on tax matters. Its adoption will also help promote inclusivity in the global tax rule-making processes and support Member States' efforts towards curbing IFFs.

There has been much written on the lack of inclusivity of the OECD and its Inclusive Framework, including most recently by institutions such as Eurodad.[8] Some of the main concerns include the following:

- Over a third of the world's countries are not members of the Inclusive Framework – 125 countries are members and 70 countries are not
- Only half of all African countries are members of the Inclusive Framework – 27 countries out of 54
- Over two-thirds of the least developed countries (LDCs) are not members of the Inclusive Framework - 12 LDCs are members and 34 are not
- The Inclusive Framework now has 142 members, but of those, 17 are not actually countries, some, for example are UK overseas jurisdictions, which means that 125 countries are members

Regarding the adoption of the resolution, reforming the international financial architecture remains a significant priority in combating IFFs and for the first time in over 70 years we are seeing traction towards returning to truly global cooperation on international tax issues.

The need for an equitable and effective global financial architecture

This bias in the current international tax system has resulted in a global coordinating mechanism that has been characterized as unfair, inefficient, vulnerable to tax avoidance and evasion and incoherent. As a result, developing countries lose significant resources that can be used to help countries achieve their developmental objectives. Specifically, Africa is estimated to lose almost US$ 90 billion annually to IFFs, which is almost half the resources needed to help it achieve the Sustainable Development Goals.[9]

The world needs a system that works in favour of those countries that the current system has exploited over the past one hundred years. The first step in an effort to achieve this is by establishing a new global tax system to whose development all countries can contribute in a democratic manner. While the United Nations has its own power dynamics, it presents the most democratic platform where all countries are able to participate. The current system has decision-making being led by the G20, 20 countries that comprise 85 percent of the global economy. If this is to remain the case, the deep structural inequalities that we see today will continue to persist.

There also exists an important conflict of interest in the positioning of the OECD as central to decision-making in matters of taxation. Most of the multinational corporations that are at the heart of the IFFs are from OECD countries and as such, influence

7 https://cdn.un.org/unyearbook/yun/pdf/1954/1954_571.pdf

8 Ryding (2022)

9 UNCTAD (2020)

decision-making in their favour. In addition to this, the OECD is home to some of the worst tax havens. Indeed, jurisdictions such as the British Virgin Islands, Netherlands, Switzerland and Luxembourg are most complicit in helping multinational corporations underpay corporate income tax and as such have little moral imperative to oversee and lead the efforts to address tax avoidance and evasion.[10]

An argument that is often raised against the shifting of these processes to the United Nations is that the United Nations does not have sufficient capacity and resources to pick up this work. This is indeed true. The OECD boasts significantly more resources and expertise gained over time. However, this does not suffice as a reason to maintain the status quo. Should the United Nations obtain centrality, all countries should work towards directing their best resources towards the United Nations. What is most important about the United Nations is that it is a political space. One of the reasons that it is important that the United Nations be brought to the fore on decision-making is because tax is inherently a political issue and the most representative politics should drive the direction of the agenda.

Conclusion

There is a dire need to strengthen global tax governance to ensure an equitable and effective global financial architecture. The current system is flawed and has seen developing countries most negatively affected by the scourge of IFFs. This is unsurprising given the non-inclusive and biased nature of the current tax governing structure as led by the OECD. There is, however, growing momentum to reform this. The most recently adopted proposal as tabled by the African Group at the United Nations is a concrete step towards reforming the system. While the United Nations itself is not perfect, it has jurisdiction and is a platform that allows all countries to have a say in a system that affects them all.

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